

**BOARD OF APPEALS CASE NO. 5427**

\*

**BEFORE THE**

**APPLICANTS: Christopher & Debbie Koermer**

\*

**ZONING HEARING EXAMINER**

**REQUEST: Special Exception to allow  
commercial vehicle storage in the AG District;  
590 Wheeler School Road, Whiteford**

\*

**OF HARFORD COUNTY**

\*

**Hearing Advertised**

\*

**Aegis: 5/5/04 & 5/12/04**

**HEARING DATE: June 30, 2004**

**Record: 5/7/04 & 5/14/04**

\*

\* \* \* \* \*

### **ZONING HEARING EXAMINER'S DECISION**

The Applicants, Christopher and Debbie Koermer, are seeking a Special Exception, pursuant to Section 267-53D(1) of the Harford County Code, for commercial vehicles storage in an Agricultural District.

The subject property is located at 590 Wheeler School Road, Whiteford, Maryland 21160, in the Fifth Election District, and is more particularly identified on Tax Map 10, Grid 1E, Parcel 12, Lot 8. The parcel contains approximately 8.29 acres, more or less.

Mr. Christopher Koermer appeared, and testified that he and the Co-Applicant-Debbie Koermer are the owners of the subject property. He indicated that he has read the Department of Planning and Zoning Staff Report, and has no additions or corrections to the information contained therein. According to Mr. Koermer the subject property is zoned Agricultural, and the lot exceeds eight acres in size. Improvements on the property consist of a two story stone and frame dwelling, with an attached two car garage and an attached rear deck. There is an above-ground pool located to the rear of the deck. The dwelling is accessed by way of a blacktopped driveway. To the left of the existing dwelling there are two 30 by 38 foot garages, and a parking area, which are separately accessed by way of a gravel drive. The parcel is densely wooded, and the existing garages are completely screened by vegetation throughout the summer months. They may be slightly visible from adjoining properties during the winter.

## **Case No. 5427 - Christopher & Debbie Koermer**

The Applicant indicated that he currently operates a septic service business from the subject property. Because the county has recently increased septic tank size requirements for dwelling units, he is actually requesting to store two vehicles over 10,000 pounds gross vehicle weight, plus one smaller commercial vehicle on the subject property. All commercial vehicles would be stored inside the two existing enclosed garages. There will be no service of any commercial vehicles on the property, with the possible exception of routine maintenance on the aforesaid vehicles. Mr. Koermer stated that in his opinion, the granting of the requested special exception will have no adverse impact on surrounding properties.

Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, appeared, and testified, regarding the findings of fact, and recommendations, made by that agency. Department representatives visited the subject site, and surrounding neighborhoods during the course of its investigation. The Department of Planning and Zoning recommended approval of the subject request in its June 9, 2004 Staff Report, subject to two conditions enumerated in that report.

According to Mr. McClune, the requested special exception use meets all requirements set forth in Harford County Code Section 267-53D(1). The property is zoned Agricultural, and all commercial vehicles are, and will continue to be, stored inside one of two existing garages. In addition, the property exceeds the required two-acre minimum size. The witness also testified that the Department had considered all provisions set forth in Section 267-9I in connection with this request, and determined that as set forth in the Staff Report, the proposed facility meets all the criteria set forth in that Code section.

Finally, Mr. McClune stated that, in his opinion, the proposed use, at the proposed location, would not result in any adverse impact to adjacent properties, or have any greater impact on adjacent uses or properties than if it were located elsewhere within the AG District. He emphasized, that the Applicant proposes to store all equipment inside of the existing enclosed garages, and pointed out that due to the topography and densely wooded character of the lot, the referenced garages are not visible from either the road or surrounding properties.

## **Case No. 5427 - Christopher & Debbie Koermer**

In response to Mr. Koermer's stated desire to store more than two commercial vehicles on the property, Mr. McClune noted that the number of vehicles requested was not designated when the hearing was advertised. He also reiterated the Department's proposed condition requiring all commercial vehicles to be stored within the two garages depicted on Attachment 4 to the Department of Planning and Zoning Staff Report. If approval is granted subject to this condition, and the number of vehicles needed subsequently "outgrows" the existing buildings, further Board of Appeals review will be required.

No witnesses appeared in opposition to this Application.

### **CONCLUSION**

The Applicants, Christopher Koermer and Debbie Koermer, are seeking a Special Exception pursuant to Section 267-53D(1) of the Harford County Code for commercial vehicles storage in an Agricultural District.

The relevant Provisions of the Harford County Code with regard to special exception uses are set forth below.

Section 267-51 provides:

“Purpose.

Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.”

Section 267-52 states:

“General Regulations

- A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.
- B. A special exception grant of approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.

## **Case No. 5427 - Christopher & Debbie Koermer**

- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.”

Section 267-53D(1) allows commercial vehicle storage in the AG District, subject to the following conditions:

- D. Motor Vehicle and related services:
  - (1) Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:
    - (a) The vehicles and equipment are stored entirely within an enclosed building or fully screened from view of adjacent residential lots and public roads.
    - (b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.
    - (c) A minimum parcel area of two (2) acres shall be provided.

Section 267-9I provides as follows:

“Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

## **Case No. 5427 - Christopher & Debbie Koermer**

- (1) The number of persons living or working in the immediate area.
- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.
- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.
- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise on the use of surrounding properties.
- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.
- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.
- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.
- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.
- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.
- (10) The preservation of cultural and historic landmarks.”

The Court of Appeals established the standard for granting a special exception uses in the case of Schultz v. Pritts, stating

“...[t]he special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any facts or circumstances negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

## **Case No. 5427 - Christopher & Debbie Koermer**

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. (*Emphasis in original*) 291 Md. 1, 11, 432 A.2d 1319 (1981).

The Schultz court further held that “the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327; citing, Anderson v. Sawyer, 23 Md. App. at 624-25, 329 A. 2d at 724 (1974) and Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 330-31, 214 A.2d 146 (1965).

The Hearing Examiner finds that the Applicants have met their burden of proving that the requested use meets the standards and requirements prescribed by the Harford County Code. The proposed vehicle storage area is located within the AG District. All commercial vehicles will be stored entirely within enclosed buildings, which are fully screened from view by adjacent residential lots and public roads. There will be no sales or service of construction or industrial equipment conducted on the property except routine maintenance of the requested commercial vehicles. The subject property, which is over eight acres in size, far exceeds the minimum two-acre lot size requirement.

The Hearing Examiner finds that the Applicants have met their burden of proving that the proposed use could be conducted without detriment to the neighborhood, and, without adversely affecting the public interest. There are no major residential developments in the area. The majority of the subject parcel is densely wooded. None of the improvements located thereon are visible from either Wheeler School Road, or adjacent residential properties. The property to the west, which is owned by Baltimore Gas & Electric Company, contains high tension lines. The parcel to the east is owned by the Applicant's parents, and the parcel to the north is an 8.9 acre lot, screened from view by dense woodland.

**Case No. 5427 - Christopher & Debbie Koermer**

The Hearing Examiner adopts the findings of the Department of Planning and Zoning, that the proposed use meets all criteria set forth in Section 267-9I of the Harford County Code. The Hearing Examiner also finds, for reasons previously stated, that the proposed use at the proposed location, would not result in any adverse impact to adjoining properties. Finally, the Hearing Examiner finds that the proposed use will not have any greater impact on adjacent properties, than it would have if located elsewhere within the AG District.

The Hearing Examiner recommends approval of the Application with the following conditions:

1. The Applicant shall obtain all necessary permits and approvals for the storage of commercial vehicles on the subject site.
2. That all commercial vehicles be stored within the two existing garages as shown on the site plan designated as Attachment 4 to the Department of Planning and Zoning Staff Report.

Date        AUGUST 2, 2004

Rebecca A. Bryant  
Zoning Hearing Examiner